

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 07-0641P
Individual Income Tax-Penalty
For the Period 2006**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration—Penalty.

Authority: IC § 6-8.1-6-1; IC § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the imposition of the penalty for failure to make sufficient payments prior to the due date of a return when an extension was granted for that return.

STATEMENT OF FACTS

Taxpayer is an individual. Prior to the due date for filing his 2006 return, Taxpayer had taxes withheld and made estimated tax payments. Taxpayer did not remit taxes with respect to income from an interest in a partnership in which he held an interest.

After the due date for the return but prior to the extended due date for that return, Taxpayer received information from the partnership concerning Taxpayer's income from the partnership. Prior to the extended due date for the return, Taxpayer determined that he had an additional liability. The prior payments were less than ninety (90) percent of the finally-determined liability. The Department imposed a penalty on the underpayment.

Taxpayer protested the penalty. An administrative hearing was conducted and this Letter of Findings results.

I. Tax Administration—Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty on Taxpayer's failure to pay the proper amount of adjusted gross income tax prior to the deadline to file an extension.

Under IC § 6-8.1-6-1:

(a) If a person responsible for filing a tax return is unable to file the return by the appropriate due date, he may petition the department, before that due date, for a filing

extension. The person must include with the petition a payment of at least ninety percent (90 [percent]) of the tax that is reasonably expected to be due on the due date. When the department receives the petition and the payment, the department shall grant the person a sixty (60) day extension.

(b) If a person responsible for filing a tax return has received an extension of the due date and is still unable to file the return by the extended due date, he may petition the department for another extension. The person must include in the petition a statement of the reasons for his inability to file the return by the due date. If the department finds that the person's petition is proper and that the person has good cause for requesting the extension, the department may extend the person's due date for any period that the department deems reasonable under the circumstances. The department may allow additional, successive extensions if the person properly petitions for the extension before the end of his current extension period.

(c) If the Internal Revenue Service allows a person an extension on his federal income tax return, the corresponding due dates for the person's Indiana income tax returns are automatically extended for the same period as the federal extension, plus thirty (30) days. However, the person must pay at least ninety percent (90 [percent]) of the Indiana income tax that is reasonably expected to be due on the original due date by that due date, or he may be subject to the penalties imposed for failure to pay the tax.

(d) Any tax that remains unpaid during an extension period accrues interest at a rate established under IC 6-8.1-10-1 from the original due date, but that tax will not accrue any late payment penalties until the extension period has ended.

Thus, a taxpayer who makes a payment of at least ninety percent of the ultimate tax liability for a year prior to the due date for that year's return is not subject to underpayment penalties unless the taxpayer fails to pay the difference at or prior to the extension deadline. If the payment is less than ninety percent of the ultimate tax liability for a year, the taxpayer is potentially subject to penalties.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, 45 IAC 15-11-2 further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish

reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer provided information sufficient to conclude that the reason for the failure to remit the proper amount of estimated tax was due to information that his income from the partnership would be zero rather than the finally-determined amount of income. Taxpayer provided information to conclude that his nonpayment based on that information constituted reasonable cause. Therefore, Taxpayer's request for penalty waiver is sustained.

FINDING

Taxpayer's protest is sustained.